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09/918,401	07/30/2001	John P. Moyna	CJM-P-01-001	4664

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PATENTS+TMS

A Professional Corporation  
1914 North Milwaukee Avenue  
Chicago, IL 60647

EXAMINER

BATSON, VICTOR D

ART UNIT

PAPER NUMBER

3671

DATE MAILED: 09/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/918,401

Applicant(s)

JOHN MOYNA

Examiner

Victor Batson

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 8-15, 18 and 20 is/are rejected.
- 7) ☒ Claim(s) 5, 7, 16, 17 and 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

***Claim Objections***

1. Claim 17 is objected to because of the following informalities. In claim 17 line 3, it appears that "the angle" should be changed to "an angle". Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4,6,8-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Foley et al. (5,363,924).

Foley et al. discloses an apparatus for separating soil including a frame, a cylinder 60, a plurality of discs (not shown but inherently used in grain drills), a hitch (54) and a controller associated with the cylinder, wherein the controller is remote from the frame and controls movement of the frame. Concerning claims 3 & 4, member 48 is considered a pillar, with member 28 considered a column, and the inside surface of member 48 considered a liner. Concerning the claimed method steps, given the structure of Foley et al., the claimed method steps would be inherently performed when using the device of Foley et al.. Concerning claim 9, the wheels that the shown tires are mounted on are considered plugs.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 15,18,20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor et al. (4,725,068).

Taylor et al. discloses an apparatus for separating soil including a frame, a pillar 12, a liner 62, and plates 56 that support column 54. Taylor et al. however lacks specifying that a plurality of discs are attached to the frame. Taylor et al. does disclose using the frame with a farming implement such as a plow or the like to work the soil (col 2 lines 50-64).

The examiner takes Official notice that it is notoriously old and well known in the art to use discs to plow and work soil.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the device of Taylor et al. with discs, since it is well known to use discs to plow and work soil.

***Allowable Subject Matter***

4. Claims 5,7,16,17,19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art of record discloses various agricultural frames, and use of discs with grain drills.

***Inquiries***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor Batson whose telephone number is (703) 305-6356. The examiner can normally be reached on Monday through Friday (except Wednesday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Will can be reached on (703) 308-3870. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1115.

September 6, 2002



Victor Batson  
Primary Examiner  
Art Unit 3671